

HON. MR. JUSTICE CLUTE says (*Continued*)

During the argument permission was given, if such by-law existed, to put in the same as part of the evidence, and counsel said that after every effort and care to ascertain whether such by-law had been passed no trace could be found, and I think it may well be taken that no by-law was, in fact, passed. This point was not taken, as I am informed, before the Trial Judge.

Section 398 of the Municipal Act provides that by-laws may be passed by the councils of all municipalities for the construction of sewers, providing an outlet for a sewer or establishing works or basins for the interception or purification of sewage and making all necessary connections therewith and acquiring land in or adjacent to the municipality for any such purposes.

Section 94 (1) of the Public Health Act provides: "Whenever the construction of a common sewer or of a system of sewerage, or an extension of the same, is contemplated by the council of any municipality, the council shall first submit the plans and specifications of the work, together with such other information as may be deemed necessary by the Provincial Board for its approval.

"(2) The Board shall inquire into and report upon such sewer or system of sewerage, as to whether the same is calculated to meet the sanitary requirements of the inhabitants of the municipality, and as to whether such sewer or system of sewerage is likely to prove prejudicial to the health of the inhabitants of the municipality liable to be affected thereby. (It does not appear that the inquiry and report was made in compliance with sub-section (2).)

"(3) The Board may make any suggestion or amendment of the plans and specifications or may impose any condition with regard to the construction of such sewer or system of sewerage or the disposal of sewage therefrom as may be deemed necessary or advisable in the public interest.

"(4) The construction of any common sewer or system of sewerage shall not be proceeded with until reported upon and approved by the Board, and no change in the construction thereof or in the disposal of sewage therefrom shall be made without the previous approval of the Board.

"(5) The Board may from time to time modify or alter the terms and conditions as to the disposal of sewage imposed by it, and the report or decision of the Board shall be final, and it shall be the duty of the municipal corporation and the officers thereof to give effect thereto."

Certain extracts from the Minutes of the City Council and copies of by-laws were, by consent, produced and put in upon argument.

From these it appears that By-law No. 5167 was passed on the 14th July, 1908, which recites that in the opinion of Council it has become desirable that the sewage of the city shall be prevented from overflowing into the waters of Toronto Bay, Ashbridge's Bay, and the lake in the immediate vicinity of Toronto, and a system of sewage disposal should be adopted.

In the Report No. 15 of the Board of Control it is recommended that by-laws be submitted to the qualified ratepayers to vote thereon to authorize debentures for trunk sewers and sewage disposal plant on the 26th of May, 1908, by By-law No. 5167, which enacts provisions for raising the money required, but no by-law is passed authorizing the construction of the plant.